

8000447 R.L.H. v. Sam's Club Issued: 1/31/02

Sam's Club asks the Utah Labor Commission to review the Administrative Law Judge's denial of its motion for an award of attorneys fees and costs against R. L. H. in the above-titled proceeding under the Utah Antidiscrimination Act ("the Act"), Title 34A, Chapter 5, Utah Code Annotated.

The Labor Commission exercises jurisdiction in this matter pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-5-107(11).

ISSUE PRESENTED

Should Ms. H. be ordered to pay attorneys fees and costs incurred by Wal-Mart in connection with Ms. H.'s failure to attend a scheduled deposition.

FINDINGS OF FACT

Pursuant to §34A-5-107(4) of the Act, Ms. H. filed a request for evidentiary hearing on her complaint of employment discrimination. Through Ms. H.'s attorney, Wal-Mart scheduled a deposition, which Ms. H. failed to attend. Ms. H. did not attend the deposition because she believed her complaint against Wal-Mart had been withdrawn. Wal-Mart seeks an award of \$610 from Ms. H. for attorneys fees and costs related to the deposition.

DISCUSSION AND CONCLUSION OF LAW

Wal-Mart contends that Rule 37(d) of the Utah Rules of Civil Procedure requires an award of attorneys fees and costs under the circumstances of this case. However, the full text of Rule 37(d) permits relief from such an award on a finding of "substantial justification" or "other circumstances" that would make the award unjust. The Commission also notes that §34A-5-701(8)(b) of the Utah Antidiscrimination Act grants discretion to the Commission to determine whether attorneys fees and costs should be imposed in proceedings under the Act.

Here, the ALJ presiding over this case concluded that an award of attorneys fees and costs was not justified. The Commission agrees. It is clear that Ms. H. is unsophisticated in the legal processes for adjudicating claims of unlawful employment discrimination under Utah's Antidiscrimination Act. The Commission is persuaded that Ms. H. did not knowingly or intentionally fail to attend her deposition, but rather, believed her complaint against Wal-Mart had been withdrawn. In fact, Ms. H.'s claim has now been dismissed and Wal-Mart will not be required to defend the matter further. The Commission therefore concludes, as did the ALJ, that an award of attorneys fees and costs against Ms. H. would be unjust.

ORDER

The Commission affirms the decision of the ALJ and denies Wal-Mart's motion for review. It is so ordered.

Dated this 31st day of January, 2002.

R. Lee Ellertson, Commissioner